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29 *Attorneys for Defendant: Otto Trucking LLC*

30 **UNITED STATES DISTRICT COURT**
31 **NORTHERN DISTRICT OF CALIFORNIA**
32 **SAN FRANCISCO DIVISION**

33 Waymo LLC,

34 Case No. 3:17-cv-00939-WHA

35 Plaintiff,

36 **DECLARATON OF HONG-AN VU IN**
37 **SUPPORT OF OTTO TRUCKING'S RESPONSE**
38 **TO WAYMO'S SUPPLEMENTAL BRIEF AND**
39 **PROPOSED JURY INSTRUCTION (DKT 1502)**

40 v.

41 Uber Technologies, Inc.; Ottomotto LLC;
42 Otto Trucking LLC,

43 Defendants.

44 Courtroom: F-15th Floor
45 Magistrate Judge: Hon. Jacqueline Scott Corley
46 Trial: October 10, 2017
47 Filed/Lodged Concurrently with:
48 1. Admin. Mtn. to File Documents Under Seal
49 2. [Proposed] Order
50 3. Redacted/Unredacted Versions
51 4. Proof of Service

DECLARATION OF HONG-AN VU

I, Hong-An Vu, declare as follows:

1. I am an associate at the law firm of Goodwin Procter, LLP, representing defendant Otto Trucking LLC (“Otto Trucking”) in this matter. I am a member in good standing of the State Bar of California. I make this declaration in support of Defendant Otto Trucking LLC’s Response to Plaintiff Waymo LLC’s Corrected Supplemental Brief (Dkt. No. 1501) in Support of its Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt. Unless otherwise stated, I make this declaration based upon matters within my own personal knowledge and if called as a witness, I could and would competently testify to the matters set forth herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the August 16, 2017 hearing transcript in the above-captioned matter.

3. Attached hereto as Exhibit 2 is a true and correct copy of WAYMO-UBER-00086885.

4. Attached hereto as Exhibit 3 is a true and correct copy of WAYMO-UBER-00086893.

5. Attached hereto as Exhibit 4 is a true and correct copy of WAYMO-UBER-00086932.

6. Attached hereto as Exhibit 5 is a true and correct copy of Waymo's initial disclosures served on April 3, 2017.

7. Attached hereto as Exhibit 6 is a true and correct copy of Waymo's supplemental initial disclosures served on June 21, 2017.

8. Attached hereto as Exhibit 7 is a true and correct copy of Waymo's corrected initial disclosures served on June 22, 2017.

9. Attached hereto as Exhibit 8 is a true and correct copy of WAYMO-UBER-
00011805

10. Attached hereto as Exhibit 9 is a true and correct copy of WAYMO-UBER-00086809

1 11. Attached hereto as Exhibit 10 is a true and correct copy of WAYMO-UBER-
2 00086907.

3 12. Attached hereto as Exhibit 11 is a true and correct copy of WAYMO-UBER-
4 00086800.

5 13. Attached hereto as Exhibit 12 is a true and correct copy of WAYMO-UBER-
6 00086812.

7 14. Attached hereto as Exhibit 13 is a true and correct copy of WAYMO-UBER-
8 00084600.

9 15. Attached hereto as Exhibit 14 is a true and correct copy of WAYMO-UBER-
10 83662.

11 16. Attached hereto as Exhibit 15 is a true and correct copy of WAYMO-UBER-
12 00035458.

13 17. Attached hereto as Exhibit 16 is a true and correct copy of WAYMO-UBER-
14 00086817.

15 18. Attached hereto as Exhibit 17 is a true and correct copy of WAYMO-UBER-
16 00084551.

17 19. Attached hereto as Exhibit 18 is a true and correct copy of WAYMO-UBER-
18 00084575.

19 20. Attached hereto as Exhibit 19 is a true and correct copy of the Declaration of
20 Michael Janosko, dated March 9, 2017.

21 21. Attached hereto as Exhibit 20 are excerpts from the deposition of Chelsea Bailey
22 dated August 1, 2017.

23 22. Attached hereto as Exhibit 21 are excerpts from the deposition of Chris Urmson,
24 dated August 24, 2017.

25 23. Attached hereto as Exhibit 22 are excerpts from the deposition of Kristinn
26 Gudjonsson, dated July 28, 2017.

27 24. Attached hereto as Exhibit 23 are excerpts from the deposition of Kristinn
28 Gudjonsson, dated September 8, 2017.

1 25. Attached hereto as Exhibit 24 are excerpts from the deposition of Michael Janosko,
2 dated August 25, 2017 based on the local date and time in Sydney, Australia, August 24, 2017
3 based on Los Angeles local date and time.

4 26. Attached hereto as Exhibit 25 are excerpts from the deposition of Alexander Sasha
5 Zbrozek, dated September 6, 2017.

6 27. Attached hereto as Exhibit 26 are excerpts from the deposition of Gary Brown
7 dated March 24, 2017.

8 28. Attached hereto as Exhibit 27 are excerpts from the deposition of Gary Brown
9 dated August 8, 2017.

10 29. Attached hereto as Exhibit 28 are excerpts from the expert report of Erik Laykin
11 dated September 7, 2017.

12 30. I participated in several meet and confer calls regarding Waymo's proposed
13 custodians once Waymo decided to include Otto Trucking in meet and confer discussions on this
14 issue. Waymo did not identify Mr. Zbrozek in its initial disclosures and Waymo only produced
15 two documents where Mr. Zbrozek is identified as a custodian in the metadata prior to the last day
16 of discovery. These two emails were not sent by Mr. Zbrozek, but presumably received by him
17 through a large distribution email alias for individuals on the Chauffeur team. All other
18 documents where Mr. Zbrozek was a custodian were produced at 8:32 p.m. on the last day of
19 discovery, or after the close of discovery. Nick Vines and Tom Gorman are not custodians and I
20 am not aware if they were ever discussed as custodians as neither appears on Waymo's initial
21 disclosures.

22 31. Otto Trucking submitted its opposition to Waymo's precis before noon on August
23 24, 2017. At that time, Otto Trucking had not yet received the documents referenced in this
24 declaration relating to Waymo's investigation of Mr. Levandowksi because Waymo had withheld
25 them as privileged.

26 32. After the Court granted Otto Trucking's privilege waiver motion to compel,
27 Waymo produced additional documents subject to that waiver on August 24, 2017 at 8:54 p.m.,
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1 just over three hours before the fact discovery cutoff. The production related to the privilege
2 waiver included approximately eighty documents, with twenty-nine of them including redactions.

3 33. In total, on August 24, 2017, the last day of discovery, Waymo produced over
4 7,200 documents, about one third of its total production up to that date.

5 34. Waymo has continued to withhold information relating to its investigation of Mr.
6 Levandowski on the basis of privilege by redacting portions of the documents produced on August
7 24 and withholding others entirely.

8 35. On August 28, 2017, Otto Trucking appeared again before Judge Corley and, based
9 on a review of the transcript, discussed, among other issues, Waymo's production of documents
10 subject to the privilege waiver. According to the transcript, Judge Corley determined that the
11 redactions were too extensive and ordered Waymo to act in "favor of disclosure rather than
12 nondisclosure." Judge Corley also ordered the depositions of Google employees Gary Brown,
13 Kristinn Gudjonsson and Sasha Zbrozek.

14 36. On August 30, 2017, after Waymo had not removed redactions or produced
15 additional documents, Otto Trucking appeared again before Judge Corley and, based on a review
16 of the transcript, Waymo was ordered to appear in court the next day with the redacted documents
17 and its privilege logs for the Court's review.

18 37. On August 31, 2017, Otto Trucking appeared again for a hearing before Judge
19 Corley, during which she reviewed Waymo's redactions and privilege logs and ordered numerous
20 additional documents to be produced, almost entirely without redactions.

21 38. On September 1, 2017, the day after Judge Corley reviewed documents regarding
22 Waymo's investigation identified on its privilege logs in camera, Waymo produced a privilege log
23 containing more than 1,300 privileged documents not previously disclosed. Prior to this,
24 Waymo's privilege logs contained a total of 288 documents.

25 39. Based upon a review of the transcript, at the hearing, Waymo did not disclose to
26 Otto Trucking or to Judge Corley at the August 31 hearing that a privilege log containing
27 additional documents relating to its investigation was being prepared for production, even though
28 Waymos' assertion of privilege was the primary topic at the hearing.

1 40. On September 2, 2017, Waymo produced new documents and mostly undredacted
2 versions of documents it had originally withheld as privileged, re-produced in redacted form, and
3 then produced again with no redactions or fewer redactions pursuant to Judge Corley's order.
4 Included in that production were Exhibits 2-4.

5 41. On information and belief, on September 6, 2017, during the deposition of Gary
6 Brown, the parties held a conference before Judge Corley due to Waymo's instructions to Mr.
7 Brown not to answer certain questions on the grounds of privilege. On information and belief,
8 Judge Corley ordered the questions answered due to the privilege waiver.

9 42. After Otto Trucking met and conferred about additional documents on this
10 privilege log, on September 8, Waymo produced two additional documents.

11 43. Each time Otto Trucking has sought Judge Corley's intervention regarding
12 documents or testimony relating to Waymo's investigation that were being withheld by Waymo,
13 Otto Trucking received additional documents, testimony or information containing additional
14 important information that weakened Waymo's claims.

15 44. Otto Trucking continues to meet and confer with Waymo regarding its compliance
16 with Judge Corley's orders requiring it to produce documents over which it waived privilege.
17 Since discovery closed on August 24, 2017, Waymo has produced over 1,600 additional
18 documents.

19 45. Attached hereto as Exhibit 29 is an email and its attachment, UBER00077201-02.

20 46. Attached hereto as Exhibit 30 is a true and correct copy of WAYMO-UBER-
21 00047580.

22 47. Attached hereto as Exhibit 31 is a true and correct excerpt of the hearing transcript
23 of proceedings held in this case on June 29, 2017.

24 48. On August 24, 2017, the final day of fact discovery, Waymo produced over 7200
25 documents. This accounts for about one-third of their total production up to that time.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct. Executed this 15th day of September, 2017 in Los Angeles, California.

3 /s/ *Hong-An Vu*
4 Hong-An Vu
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document including all of its attachments with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **September 15, 2017**. I further certify that all participants in the case are registered CM/ECF users and that service of the publicly filed documents will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on
September 15, 2017.

/s/ Neel Chatterjee
NEEL CHATTERJEE

ATTORNEY ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I, Neel Chatterjee, hereby attest that concurrence in the filing of this document has been obtained from any signatories indicated by a "conformed" signatures (/s/) within this e-filed document.

Dated: September 15, 2017

/s/ Neel Chatterjee
Neel Chatterjee